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File Security 4-1

MEMORANDUM FOR THE RECORD

SUBJECT: ICRC Revision of E.O. 11652 in Light of FOI

1. In accordance with the decision of ICRC at the January 9 meeting, a meeting of the Scalia subcommittee of ICRC met at the National Archives Building on January 20, attended by all members or representatives of ICRC and Mr. Casselman.

2. Two trends of thought developed: (a) It was urged by State and entirely agreed by all that we should attempt to develop good case law, that is, we must move towards having the early court cases arise from situations likely to result in good court decisions. To do this undoubtedly will cause the painful release of some information. (b) The Department of Justice feels that it needs assistance and expertise from someone in the performance of its coordination function under the Freedom of Information Act. That coordination function itself is designed to avoid litigation apt to result in bad case law. There was some feeling also that the position of the government in the event of litigation would be enhanced by a showing of a so-called disinterested review of the decision refusing declassification by a body other than the department or agency which classified the information. (c) Justice feels that the subject matter of exemption one requires more informed and sophisticated expertise than is needed for the other exemptions. (d) Notwithstanding the above, there was some recognition that ICRC does not possess the necessary expertise and realistically cannot be given sufficient expertise, having in mind budget and manpower limitations. Mr. Casselman in particular mentioned that Congressional pressure, and I believe recent statutory provisions, severely restrict the prior practice of having agencies loan and detail personnel to White House staffs and groups, with salaries and expenses remaining the responsibility of the agencies and departments rather than the White House. (d) There was feeling but not agreement that ICRC should be given review authority with respect to all classified documents not merely 10-year-old documents.

2. Mr. Scalia is drawing up a paper for further consideration by this group. While I am not clear what the paper will provide, it seems certain that Justice is going to press for some sort of expert assistance and review for the Department.



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